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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/784,005	02/16/2001	Gavin Paul Vinson	0623.1040001/EKS/PSC/TAC	3969
26111	7590	11/19/2003	EXAMINER	
STERNE, KESSLER, GOLDSTEIN & FOX PLLC 1100 NEW YORK AVENUE, N.W. WASHINGTON, DC 20005			MELLER, MICHAEL V	
			ART UNIT	PAPER NUMBER
			1654	

DATE MAILED: 11/19/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/784,005

Applicant(s)

VINSON ET AL.

Examiner

Michael V. Meller

Art Unit

1654

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 25 August 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-3, 5-7 and 14-25 is/are pending in the application.
- 4a) Of the above claim(s) 7, 15, 21-25 are is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-3, 5, 6, 14, 16-20 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. §§ 119 and 120

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\* See the attached detailed Office action for a list of the certified copies not received.
- 13) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.  
a) ☐ The translation of the foreign language provisional application has been received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_ 6) ☐ Other: \_\_\_\_\_

## **DETAILED ACTION**

### ***Election/Restrictions***

Applicant's election without traverse of Group I, claims 1-3, 5, 6, 14, 16-20 in Paper No. 2 is acknowledged.

Claims 7, 15, 21-25 are withdrawn from further consideration as being drawn to non-elected subject matter.

The restriction requirement is made FINAL.

### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claims 1-3, 5, 6, 14, 16-20 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention.

"A method of preventing metastasis of cancer cells" is not enabled by the instant specification. The specification does have support for treating metastasis of cancer

cells, but to say "preventing" means that any and all cancer cells are totally eliminated. Since applicant does not have such support, the claims are not enabled for "preventing".

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-3, 5, 6, 14, 16-20 are rejected under 35 U.S.C. 102(b) as being anticipated by Iwasaki et al. '98 (ref. AT3), Carter et al., Ohigashi et al., Kitamura et al., Tsuji et al. (ref. AT5), Yamaue et al., Iwasaki et al. '95 or Takahashi.

Applicant argues that the references use more than just the angiotension as the active agent. Applicant's specification does not provided support as applicant pointed out. Nowhere in applicant's citations from the specification did it ever support the use of angiotension only as applicant contends. In fact, the specification makes it clear that other active agents along with the angiotension are contemplated for use, see page 11.

Yamaue (page 303, number 2) and Iwasaki '95 (pg. 1678) are both very explicit about using only angiotension. Thus, even if applicant had the support for angiotension by itself, which they do not, the claims would still be anticipated.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-3, 5, 6, 14, 16-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Iwasaki et al. '98 (ref. AT3), Carter et al., Ohigashi et al., Tsuji et al. (ref. AT5), or Iwasaki et al. '95 in view of Takahashi, Kitamura et al. or Yamaue et al.

As stated above, the references each teach angiotension administered to a patient. Applicant's do not have the support to claim application of only angiotension and no other active agents but even if they did Iwasaki '95 and Yamaue both show application of only angiotension. Thus, the claims are obvious over the cited art.

Takahashi, Kitamura and Yamaue all teach treating gastric or lung cancer.

Claims 1-3, 5, 6, 14, 16-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Takahashi, Kitamura et al. or Yamaue et al.

As stated above, the references each teach angiotension administered to a patient. Applicant's do not have the support to claim application of only angiotension and no other active agents but even if they did Iwasaki '95 and Yamaue both show application of only angiotension. Thus, the claims are obvious over the cited art.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael V. Meller whose telephone number is 703-308-4230. The examiner can normally be reached on Monday thru Friday: 9:00am-5:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Brenda Brumback can be reached on 703-306-3220. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0196.

A handwritten signature in black ink, appearing to read 'M. Meller', with a stylized flourish at the end.

Michael V. Meller  
Primary Examiner  
Art Unit 1654

MVM